

E-FILED - 1/27/11

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

| | | |
|------------------------|---|---------------------------|
| ARTEMIO GONZALES, |) | No. C 10-2963 RMW (PR) |
| |) | |
| Petitioner, |) | ORDER OF DISMISSAL; ORDER |
| |) | DENYING CERTIFICATE OF |
| vs. |) | APPEALABILITY |
| |) | |
| GEORGE LEOTTI, Warden, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

Petitioner, a state prisoner proceeding pro se, filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 16, 2010, the court ordered petitioner to show cause within thirty days why the case should not be dismissed for failure to exhaust state remedies. On September 30, petitioner responded that he was still in the process of exhausting his state remedies, and requested that the court stay the action for 90 days until he completed exhaustion. On November 30, 2010, the court determined that petitioner was not eligible for a stay, and ordered him to either dismiss the unexhausted claims and proceed with the exhausted claims, or dismiss the entire action and re-file a new petition once he exhausted all his claims in the state courts. The court directed petitioner to file his election within 30 days of the filing date of the order. The court warned him that a failure to choose one of the two options in a timely manner would result in dismissal of this action without prejudice. On January 6, 2011, petitioner filed a letter

1 informing the court that his four unexhausted claims are still pending in state court. However,
2 petitioner did not choose an option as ordered by the court.

3 Accordingly, this case is DISMISSED without prejudice for failure to exhaust. The
4 Clerk shall terminate all motions, enter judgment, and close the file.

5 The court concludes that no “jurists of reason would find it debatable whether the petition
6 states a valid claim of the denial of a constitutional right [or] that jurists of reason would find it
7 debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel,
8 529 U.S. 473, 484 (2000). Accordingly, a certificate of appealability is DENIED.

9 IT IS SO ORDERED.

10 DATED: 1/25/11


RONALD M. WHYTE
United States District Judge